

## GENERAL CONDITIONS FOR PURCHASE AGREEMENTS

1. **Definitions.** The term Department Head means the director of the using department of the County of Culpeper and the term his or her duly authorized representative means any person authorized in writing by the department head to act for the department head in connection with this contract.

The term Purchasing Agent means the Purchasing Agent of the County of Culpeper whose duties and responsibilities are more particularly described in the Culpeper County Purchasing Resolution, or his or her designees, as duly authorized pursuant to the Purchasing Resolution.

2. **Compliance with Laws.** The Seller shall at all times observe and comply with all laws, ordinances and regulations of the federal, state and local government, which may in any manner affect the preparation of proposals or the performance of this Agreement, including, without limitation, the Culpeper County, Virginia, Purchasing Resolution, the Culpeper County Code, and the Code of Virginia. Copies of the Purchasing Resolution and the County Code are available for inspection in the office of the Purchasing Agent.

The Agreement is governed by the applicable provisions of the Culpeper County Purchasing Resolution, which is incorporated herein by reference. The time limit for decision by the County Administrator in the event of a contractual dispute, as defined in the Resolution, is 15 days. Procedures for contractual disputes, appeals and protests shall be governed by the Resolution.

3. **Taxes.** The County of Culpeper is exempt from excise taxation by virtue of exemption certificate No. 54-6001236. The Purchasing Agent will complete such documents as may be necessary for Seller to comply with applicable tax laws and regulations. The price or prices quoted here shall include all other federal and state, direct and indirect taxes which apply.

The prices quoted here shall agree with all federal laws and regulations.

4. **Notice.** All communications and notices provided for here shall be in writing, delivered personally or mailed first class, postage prepaid, to the contractor by name and address listed on the proposal; to the department head of the using department by name and address listed on the cover here and to the Purchasing Agent, County Administration Offices, 302 North Main Street, Culpeper, VA 22701.
5. **Nondiscrimination.** If this Agreement is valued in excess of \$10,000, during the performance of this Agreement, Seller, in performing under this Agreement, agrees as follows:
  - a. Seller will not discriminate against any employee or applicant for employment because of race, religion, color, sex, age or national origin, except where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of Seller. Seller agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
  - b. Seller, in all solicitations or advertisements for employees placed by or on behalf of Seller, will state that Seller is an Equal Opportunity Employer.
  - c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

- d. Seller will comply with the provisions of the Americans with Disabilities Act of 1990 which prohibits discrimination against individuals with disabilities in employment and mandates their full participation in both publicly and privately provided services and activities.
  - e. Seller will include the provisions of the foregoing paragraphs in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.
6. ***Packing, Shipping and Delivery.*** Unless otherwise specified, (i) all packing and crating by Seller shall be in compliance with carrier's tariffs and in suitable containers for protection in shipment and storage, and (ii) the price or prices include all charges for Seller's packing and crating, and for transportation to the F.O.B. point.

All materials shipped to the County of Culpeper must be shipped F.O.B. Culpeper. If delivery is made by truck, arrangements must be made in advance by the Seller in order that the County may arrange for receipt of the materials. The material must then be delivered where directed.

Truck deliveries will be accepted before 4:00 p.m. on weekdays only. No deliveries will be accepted on Saturdays, Sundays or holidays.

The quantity of material to be delivered by truck shall be ascertained from a weight certificate issued by a duly licensed Virginia public weigh master. In the case of delivery by rail, weight will be ascertained from bill of lading from originating line, but the County reserves the right to reweigh at the nearest available railroad scale.

7. ***Price and Quantity.*** No sale or purchase of goods hereunder shall be at higher prices than specified in the Agreement. Unless otherwise provided herein, the price or prices shall include all applicable federal, state and local taxes in effect on the date of the Order. In case of new taxes or increased rates or the repeal of taxes or the reduction of rates, prices shall be adjusted accordingly. Shipments must equal exact quantities ordered, unless otherwise agreed in writing by the Purchasing Agent.
8. ***Price Reduction.*** If at any time after the execution of this Agreement the Seller makes a general price reduction in the comparable price of any material covered by the contract to customers generally, an equivalent price reduction based on similar quantities and considerations shall apply to the contract for the duration of the contract period (or until the price is further reduced). The price reduction shall be effective at the same time and in the same manner as the reduction in the price to customers generally. For purpose of this provision, a general price reduction shall mean any horizontal reduction in the price of an article or service offered (1) to Seller's customers generally, or (2) in the Seller's price schedule for the class of customers, i.e., wholesalers, jobbers, retailers, etc., which was used as the basis for bidding on this contract. An occasional sale at a lower price, or sale of distressed merchandise at a lower price, would not be considered a general price reduction under this provision. The Seller shall invoice the ordering offices at the reduced prices indicating on the invoice that the reduction is pursuant to the price reduction ☐ provision of the contract documents. The Seller, in addition, shall within ten (10) days of any general price reduction notify the Purchasing Agent of the County of Culpeper of the reduction by letter. Failure to do so may require termination of the contract. Upon receipt of any such notice of a general price reduction all ordering offices will be duly notified by the Purchasing Agent.

The Seller shall furnish, within ten (10) days after the end of the contract period, a statement certifying either (1) that no general price reduction, as defined above, was made after the date of the Agreement, or (2) if any such general price reductions were made they were reported to the

Purchasing Agent within ten (10) days, and ordering offices were billed at the reduced prices. Where one or more such general price reductions were made, the statement furnished by the Seller shall include with respect to each price reduction (1) the date when notice of any such reduction was issued, (2) the effective date of the reduction, and (3) the date when the Purchasing Agent was notified of any such reduction.

9. ***Quality Control and Inspection.*** Seller shall provide and maintain a quality control system acceptable to County. All supplies may be subject to (i) inspection or verification during the period of manufacture, (ii) inspection or verification prior to shipment, and (iii) final inspection and acceptance at destination, notwithstanding any prior shipment, and (iv) final inspection and acceptance at destination, notwithstanding any prior payment or inspection and acceptance. County may reject and hold at Seller's expense, subject to Seller's disposal, all supplies not conforming to applicable warranties, specifications, drawings, samples, or descriptions. Without limiting any other rights, County may at its option require Seller to (i) repair or replace at Seller's expense any item of supplies ordered which fails to meet the requirements of applicable warranties, specifications, drawings, supplies, or descriptions, or (ii) refund the price of any such item. Rejected supplies shall not be retendered to County by Seller unless notification of such past rejection is submitted with the retender and County has consented to such retender. Buyer's right of inspection and acceptance shall not be deemed to relieve Seller of its obligation to ensure that all goods conform to the applicable warranties, specifications, drawings, samples, or descriptions.

The County, by its Purchasing Agent, or any person whom he or she shall designate, shall have a right to inspect any material to be used in carrying out this contract.

The County does not assume any responsibility for the availability of any controlled materials or other materials and equipment required under this contract.

The Seller shall be responsible for the contracted quality and standards of all materials, components or completed work furnished under this contract up to the time of final acceptance by the County.

Materials, components or completed work not complying with the requirements or specifications may be rejected by the Purchasing Agent and shall be replaced by the Seller at no cost to the County.

Any materials or components rejected shall be removed within a reasonable time from the premises of the County at the entire expense of the Seller, after written notice has been mailed by the County to the Seller that the materials or components have been rejected.

10. ***Deliveries.*** County's operations are based upon the understanding and agreement that supplies will be delivered to County by the date specified on the face of each Order hereunder. Time is, therefore, of the essence in this agreement. In case of failure to deliver goods in accordance with the Purchase Order terms and conditions, Buyer, after due oral or written notice, may procure the goods from other sources and hold Seller responsible for any resulting additional purchase and administrative costs; provided, that if public necessity requires the use of nonconforming goods, they may be accepted and payment shall be made at a reduction in price determined solely by Buyer. This remedy shall be in addition to any other remedy which Buyer may have.
11. ***Changes.*** County shall have the right to make, from time to time and without notice to any sureties or assignees, changes as to packing, testing, destinations, specifications, designs and delivery schedules. Seller shall immediately notify County of any increases or decreases in costs caused by such changes, and an equitable adjustment in prices or other terms hereof shall be agreed upon in a written amendment to this Agreement.

12. **Responsibility for Property.** Seller shall be liable for any loss or destruction of, or damage to, property of County caused by the negligence or wrongful acts or omissions of Seller or Seller's representatives, agents, or employees. Title and risk of loss or damage to all goods shall be the responsibility of Seller until final acceptance by Buyer.
13. **Secrecy of County's Data.** Seller shall not use or disclose to third parties any data, designs, or other information belonging to or supplied by or on behalf of County, without first obtaining the prior written authorization of County. Upon County's request, such data, designs, or other information, including all copies thereof, shall be returned to County. Where County's data, designs, or other information are furnished to Seller's suppliers for procurement of supplies by Seller for use in the performance of County's orders, Seller shall insert the substance of this provision in its orders.
14. **Assignment and Set-off.** This Agreement shall be binding upon any successor to Seller's business provided that Seller shall not delegate any duties, nor assign any rights or claims under this Agreement, or for breach thereof, without prior written consent of County (but in no case shall the consent relieve the Seller from his or her obligations or change the terms of the contract), and any such attempted delegation or assignment shall be void and unenforceable. The Seller shall not transfer or assign any contract funds or claims due or to become due without the written approval of the Purchasing Agent having first been obtained.
- All claims for monies due or to become due from County shall be subject to deduction by County for any set-off or counterclaim arising out of this or any other of County's purchase orders with Seller, or for any other liquidated debt from Seller to County, whether or not any such assignment is made, and whether such set-off or counterclaim arose before or after any such assignment by Seller.
15. **Non-infringement.** To the extent that the supplies are manufactured to detailed designs not originated and furnished by County, or by a process or method the use of which is not specifically directed by County, Seller guarantees that the sale or use of such supplies or the use of such process or method hereunder will not infringe any United States or foreign patents, trademarks, trade names, copyrights, or trade secrets, and shall indemnify and save County and its customers harmless from any expenses, loss, cost, damage, or liability which may be incurred on account of infringement or alleged infringement of patent rights, trademarks, trade names, copyrights, or trade secrets with respect to such supplies. Seller shall defend, at its own expense, any action or claim in which such infringement is alleged, provided Seller is notified within a reasonable time of such action or claim against County. Indemnification shall not apply to infringements arising from use in combination with other items where infringement would not have occurred from the normal use of which the article supplied by Seller was designed.
16. **Bankruptcy.** In the event of any proceedings, voluntary or involuntary, in bankruptcy or insolvency by or against Seller, or in the event of the appointment, with or without Seller's consent, of an assignee for the benefit of creditors or of a receiver, County shall be entitled to cancel any unfilled part of this Agreement without any liability whatsoever.
17. **Governing Law and Venue; No Arbitration or Mediation.** This Agreement and the contract between the parties evidenced hereby, shall be deemed made in the Commonwealth of Virginia, and shall be construed and interpreted solely in accordance with the laws of Virginia. Venue for any action arising hereunder shall be in the state courts for the County of Culpeper, Virginia. All parties expressly

waive the right, if any, to remove any case filed in the courts of Culpeper County to federal court. Seller expressly waives the right, if any, to remove any such filed case to federal court. Nothing under this Agreement shall be subject to arbitration or mediation, and any references to arbitration or mediation are expressly deleted from the Contract Documents.

18. **Traffic Routing and Proof of Shipment.** Any losses accruing from deviation from County's routing instructions, shall be charged to Seller's account. Seller shall forward to County, with the invoice, the express receipt or bill of lading, signed by the carrier, evidencing the fact that shipment was made.
19. **Indemnification.** In the event Seller, its employees, agents, subcontractors, or representatives enter premises occupied by or under the control of County or third parties in the performance of this Agreement, Seller shall save, defend, hold harmless and indemnify the County, and all of its officers, departments, agencies, agents, and employees (collectively "County") from and against any and all claims, losses, damages, injuries, fines, penalties, costs (including court costs and attorneys' fees), charges, liability, or exposure, by reason of property damage or personal injury to any person, including Seller's employees, of whatsoever nature or kind arising out of, as a result of, or in connection with such performance occasioned in whole or in part by the actions or omissions of Seller, its employees, agents, subcontractors, or representatives. Without in any way limiting the foregoing, Seller and its subcontractors shall maintain public liability and property damage insurance in reasonable limits to covering the obligations set forth above, and shall maintain Workman's Compensation insurance as required by law covering all employees performing under this Agreement.
20. **Limitation of Liability.** County's liability shall be limited to the unpaid balance of amounts due under this Agreement, and in no event shall County be liable to Seller for indirect, incidental, consequential or special damages.
21. **Warranty.** Seller warrants that all supplies furnished hereupon will be free from defects in material and workmanship, conform to applicable specifications, drawings, samples, and descriptions, and of Seller's design, be free from design defects. Unless otherwise specified in the delivery order, the supplies shall be new and not used or reconditioned, shall be merchantable, and (if Seller knows or has reason to know of County's intended purpose or use therefore) shall in all respects be suitable for the particular purpose or use for which they are purchased by County. Seller warrants that it has good title to all goods Seller invoices for payment. Seller shall indemnify and hold County harmless from and against any and all damages, losses, demands, costs and expense incurred by County due to Seller's breach of its warranties hereunder. All guarantees and warranties required shall be furnished by the Seller and shall be delivered to the Purchasing Agent before final voucher on the contract is issued.
22. **Termination For Default.** The contract will remain in force for the full period specified and until the County determines that all requirements and conditions have been satisfactorily met and the County has accepted the work, and thereafter until the Contractor has met all requirements and conditions relating to the work under the Contract Documents following the contract term, including warranty and guarantee periods. However, the County will have the right to terminate the contract sooner if the Contractor has failed to perform satisfactorily the work required, as determined by the County in its discretion. In the event the County decides to terminate the contract for failure to perform satisfactorily, the County will give the Contractor at least fifteen days written notice before the termination takes effect. Such fifteen day period will begin upon the mailing of notice by the County. If the contract is terminated for the Contractor's failure to provide satisfactory contract performance,

the Contractor will be entitled to receive compensation only for all contract services satisfactorily performed by the Contractor and allocable to the contract and accepted by the County prior to such termination. However, an amount equal to all additional costs required to be expended by the County to complete the work covered by the contract, including costs of delay in completing the project, shall be either subtracted from any amount due the Contractor or charged to the Contractor in the event the County terminates the Contract. The Contractor shall not be entitled to any compensation for any lost profit, consequential damages or any sums except or expressly set forth herein.

Except as otherwise directed, the Contractor shall stop work on the date of receipt of notice of the termination or other date specified in the notice, place no further orders or subcontracts for materials, services, or facilities except as are necessary for the completion of such portion of the work not terminated, and terminate all vendors and subcontracts and settle all outstanding liabilities and claims.

23. ***Termination For Convenience.*** The performance of work under the contract may be terminated by the Purchasing Agent in whole or in part whenever the Purchasing Agent shall determine that such termination is in the County's best interest. Any such termination shall be effected by the delivery to the Contractor of a written notice of termination at least fifteen days before the date of termination, specifying the extent to which performance of the work under the contract is terminated and the date upon which such termination becomes effective.

After receipt of a notice of termination and except as otherwise directed the Contractor shall stop all work on the date of receipt of the notice of termination or other date specified in the notice; place no further orders or subcontracts for materials, services or facilities except as are necessary for the completion of such portion of the work not terminated; immediately transfer all documentation and paperwork for terminated work to the County; and terminate all vendors and subcontracts and settle all outstanding liabilities and claims.

The contractor will be entitled to receive compensation only for all contract services satisfactorily performed by the contractor and allocable to the contract. The contractor shall not be entitled to any compensation for any lost profit, consequential damages or any sums except or expressly set forth herein.

24. ***Immigration Reform and Control Act of 1986.*** The Contractor certifies that it does not and will not during the performance of the Contract employ illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986.

25. ***Approval by County Attorney.*** Pursuant to the requirements of state and local law, this Agreement has been approved as to form by the Culpeper County Attorney.

26. ***Time is of the essence in the performance of this agreement.***